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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Steven Duane Myers Confirmation No.: 2733
Application No.: 09/839,009 Group No.: 2617
Filed: 04/20/2001 Examiner: Temica M. Beamer
For: COMMUNICATION DEVICE QUALIFICATION FOR BROADBAND WIRELESS
SERVICE

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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Introductory Comments

In response to the final Office action of June 15, 2006 (hereinafter “the final Office action”), an expedited response with no amendments was filed on August 15, 2006, within two months of the date of the final Office action. However, as of December 15, 2006 (the statutory deadline for reply), the Assignee has not received an advisory action, as set forth under 37 C.F.R. § 1.136(a) and MPEP §§ 706.07(f) and 714.13. As a result, to prevent abandonment of the above-identified application, the Assignee respectfully requests review of the final rejection in the application. No amendments are being filed with this request. A Notice of Appeal under 37 C.F.R. § 41.31(a)(1) is being filed herewith. The review is requested for the reasons provided in the following remarks.

Remarks

Claims 1-28 are pending. Claims 1, 2, 6, 9-13, 17 and 20-28 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,151,309 to Busuioc et al. (hereinafter “Busuioc”) in view of U.S. Patent Application Publication No. 2002/0120713 to Gupta et al. (hereinafter “Gupta”). (Page 3 of the final Office action.) Also, claims 9, 20, 25 and 26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Busuioc in view of Gupta and U.S. Patent No. 6,529,936 to Mayo et al. (Page 6 of the final Office action.) Claims 3-5, 7, 8, 14-16, 18 and 19 are objected to as being dependent upon a rejected base claim, but are otherwise allowable. (Page 7 of the final Office action.) The Assignee respectfully traverses the rejections in light of the following discussion.

Independent software product claim 1 is replicated below, with emphasis supplied:

1. A software product for qualifying communication devices for broadband wireless services, the software product comprising:

qualification software configured when executed by at least one processor to direct the at least one processor to identify requirements of a broadband wireless service, execute an application to determine configuration information for a first communication device, and perform a comparison of the configuration information to the requirements of the broadband wireless service to determine if the first communication device is qualified to receive the broadband wireless service; and

a software storage medium configured to store the qualification software.

Independent method claim 12 and independent qualification system claim 23 incorporate similar provisions.

The final Office action indicates that *identifying requirements of a broadband wireless service* by way of qualification software is disclosed in Busuioc in the passage at column 1, lines 47-55. (Page 3 of the final Office action.) More specifically, the final Office action indicates that the requirement being identified in Busuioc is *bandwidth availability to a mobile customer*. (Page 3 of the final Office action; emphasis supplied. See also column 2, lines 28-31 of Busuioc.) The Assignee respectfully disagrees with the allegation that Busuioc teaches this particular provision of claim 1.

Generally, Busuioc “provide[s] a service management system, which can be used in the provision of services to a mobile user by means of more than one network platform. In particular, embodiments of the present invention can be used to provide services by means of a

combination of a fixed and a mobile communications network, in spite of the differing constraints such as the more limited bandwidth available in mobile networks.” (Column 1, lines 27-34.) “In an application, a mobile user might move from a cell of the mobile network which can provide relatively wide bandwidth to one which can only provide limited bandwidth.” (Abstract.)

The passage of Busuioc cited in the Office action indicates that “[s]oftware agents for use in embodiments of the present invention can be designed to manage systems where there is a large amount of distributed information available and *a large number of users with specific service requirements.*” (Column 1, lines 52-56; emphasis supplied.) Thus, Busuioc acknowledges the existence of a *user’s* requirements or needs for specific types or levels of service from a mobile communication network, such as the availability of a particular amount of bandwidth. However, Busuioc does not mention *requirements of a broadband wireless service*, as provided for in claims 1, 12 and 23 (i.e., *what the broadband wireless service requires of a communication device for basic operation of the device with the service*, such as “hardware and software requirements for a communication device to receive the broadband wireless service,” as indicated at page 7, lines 3-5, of the present application). Identifying such requirements is necessary in embodiments of the present invention “to determine if the first communication device is qualified to receive the broadband wireless service,” as set forth in claims 1, 12 and 23. Busuioc, on the other hand, already presumes that the device is receiving at least some level of service from the mobile network. Thus, Busuioc does not teach or suggest identifying requirements of a broadband wireless service, as provided in claims 1, 12 and 23.

In its Response to Arguments, the final Office action further argues that “Busuioc discloses software agents that provide a wide range of services to mobile devices. Busuioc also discloses wherein these services have specific requirements (col. 1, lines 47-56).” However, as stated above, Busuioc specifically indicates that these requirements are the *user’s requirements* or needs, not the requirements of a broadband wireless service that are compared to configuration information of a communication device to determine if the communication device is qualified to receive the broadband wireless service, as provided for in claims 1, 12 and 23.

The Response to Arguments also indicates that “Busuioc further discloses wherein these agents work cooperatively to collate their available link capabilities and cell bandwidth in a “resource configuration” required for a particular service.” (Page 2 of the final Office action; see

also column 4, lines 7-12, of Busuioc.) However, link capacities and cell bandwidth are *characteristics of the network providing the service, not requirements of a broadband wireless service* to be compared with configuration information of a communication device to determine if the *device* is qualified to receive the service. Throughout Busuioc, the ability of the user's device to interact with the network is generally presumed; it is the ability of the *network* to satisfy the needs of the user that is the focus of Busuioc.

The final Office action also indicates that “[a]t the time of the invention it would have been obvious to one of ordinary skill in the art to modify Busuioc to include *software means determining whether or not broadband is available* for the purpose of *determining capabilities of a wireless device as to whether broadband service is installable on said device.*” (Page 4 of the final Office action; emphasis supplied.) The Assignee respectfully disagrees. Software that determines whether or not broadband service is available in a particular area, as discussed in Gupta at paragraph [0033], has nothing to do with, and would not aid in, determining capabilities of a wireless device as to whether broadband service is installable on the device. For example, the software for enabling broadband may be installable in the device, and yet at the same time the device may be outside of a broadband service area; one has nothing to do with the other. Thus, the Assignee contends that no motivation exists to combine Gupta with Busuioc, and such indication is respectfully requested.

Therefore, the Assignee contends that claims 1, 12 and 23 are allowable in view of Busuioc and Gupta, and such indication is respectfully requested.

Claims 2, 6, and 9-11 depend from independent claim 1, claims 13, 17 and 20-22 depend from independent claim 12, and claims 24-28 depend from independent claim 23, thus incorporating the limitations of their respective independent claims. Since each of independent claims 1, 12 and 23 have been shown allowable by way of the above discussion, the Assignee asserts that claims 2, 6, 9-11, 13, 17, 20-22 and 24-28 are allowable for at least the same reasons, and such indication is respectfully requested.

Therefore, the Assignee respectfully requests the rejections of claims 1, 2, 6, 9-13, 17 and 20-28 be withdrawn.

Indication of Allowable Subject Matter

The Office action indicates that claims 3-5, 7, 8, 14-16, 18 and 19 represent allowable

subject matter. Accordingly, the patentability of these claims is not discussed herein. Furthermore, the Assignee thanks the Examiner for her consideration of these claims.

Conclusion

Based on the above remarks, the Assignee respectfully requests the reversal of the final rejection of claims 1, 2, 6, 9-13, 17 and 20-28.

The Assignee hereby authorizes the Office to charge Deposit Account No. 21-0765 the appropriate fee under 37 C.F.R. § 41.20(b)(1) for the Notice of Appeal filed herewith. As an advisory action was not received after the timely filing of the response to the final Office action, as described above, the Assignee believes no fees for an extension of time are required. However, should the Office determine additional fees are necessary, the Office is authorized to charge Deposit Account No. 21-0765 accordingly.

Respectfully submitted,

Date: 12/15/06



SIGNATURE OF PRACTITIONER

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